

# Guiding Clients Through Difficult Situations and Complicated Decisions

James C. Overholser\*

## I. DEALING WITH A DIFFICULT SITUATION

In many psychotherapy sessions, the therapist is thrown into the middle of a difficult and complex situation. In the present situation, David has been convicted of a murder that was committed by Steven. Now, Steven has confessed to his therapist and admitted his guilt for the crime. When a difficult issue is quickly thrown at the therapist, a supportive therapist can be caught off guard, and may not realize the numerous ethical, legal, and moral issues that surround the therapeutic dialogue. It can sometimes be a mistake for the therapist to respond quickly, without reviewing a variety of options. In most cases, it will be important for the therapist to take time between scheduled therapy sessions in order to review the situation and process the events.

As a clinical psychologist, it has become apparent that there are many situations when a therapist must make many difficult decisions regarding how to help a client while respecting professional ethics and legal rules pertaining to clinical practice. In most complicated situations, it is useful for the therapist to review a variety of options. Koocher and Keith-Spiegel have outlined multiple strategies that can be used when a mental health professional encounters a difficult and complex ethical/legal/moral dilemma.<sup>1</sup> These strategies include reviewing the local laws that may pertain to the situation, consulting with psychologist colleagues and possibly reviewing the situation with an attorney, reviewing the ethical guidelines for psychologists or other relevant health care providers, and evaluating the welfare for all parties who may be affected by the situation.<sup>2</sup> In addition, the clinician may review any policies that have been established at the

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\* Ph.D., ABPP, Department of Psychology, Case Western Reserve University.

<sup>1</sup> GERALD P. KOOCHER & PATRICIA KEITH-SPIEGEL, *ETHICS IN PSYCHOLOGY AND THE MENTAL HEALTH PROFESSIONS: STANDARDS AND CASES* (3d ed. 2008). This text includes a useful list of sources to check when confronted with a difficult ethical dilemma.

<sup>2</sup> Samuel Knapp, Michael Gottlieb, Jason Berman & Mitchell M. Handelsman, *When Laws and Ethics Collide: What Should Psychologists Do?* 38 *PROF. PSYCHOL.: RES. & PRAC.* 54, 56–57 (2007).

therapist's clinic, the APA ethical codes,<sup>3</sup> and state laws pertaining to the work of psychologists.<sup>4</sup>

As a first step when dealing with a complicated situation, it is usually essential for the psychotherapist to remain calm and gather more information. Many psychiatric clients have been known to magnify their problems, excessively expand their perceived personal responsibility for negative events, and attribute blame onto themselves for events that they were not the sole or primary causal factor. By remaining in the role of a supportive therapist, it can be possible to explore the client's memory of these events and gather more objective information about the difficult situation.

## II. THE CENTRAL ROLE OF CONFIDENTIALITY IN PSYCHOTHERAPY SESSIONS

In the case of Steven, the therapist will need to confront the importance of confidentiality and its limits. Psychotherapy relies on privacy and trust. Without a strong assurance that the material will remain confidential, the dialogue will become stilted, superficial, or guarded. Clients might discontinue clinical services if they fear their conversations will not remain completely confidential.

The central issue that surrounds some cases of confidentiality is risk of harm. The professional obligation to protect confidentiality does not always apply when there are signs that the client presents an imminent danger to oneself or others.<sup>5</sup> When evaluating a possible need to breach confidentiality, the focus is usually on potential harm that might occur in the near future. For example, according to Ohio law, "disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on himself/herself or on another person."<sup>6</sup> There are three central components that need to be confronted

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<sup>3</sup> American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct: 2010 Amendments*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/ethics/code/index.aspx>.

<sup>4</sup> OHIO REV. CODE ANN. § 4732.19 (West 2011) summarizes the law as it pertains to psychologist-client privilege. OHIO REV. CODE ANN. § 2317.02 (West 2011) summarizes the law as it pertains to privileged communications between a psychologist and a client. OHIO ADMIN. CODE 4732-17-01(G) (2011) summarizes the law as it pertains to confidentiality, noting that "confidential information . . . obtained . . . as a result of the professional relationship . . . is not to be disclosed by the psychologist . . . without the informed consent of the [client]."

<sup>5</sup> American Psychological Association Committee on Legal Issues, *Strategies for Private Practitioners Coping with Subpoenas or Compelled Testimony for Client Records or Test Data*, 37 PROF. PSYCHOL.: RES. AND PRAC., 2152, 2220 (2006).

<sup>6</sup> OHIO ADMIN. CODE 4732-17-01(G)(c) (2011) states that "A psychologist or school psychologist may disclose confidential information without the informed written consent of a client when the psychologist or school psychologist judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on himself/herself or on another person. In such case, the psychologist or school psychologist may disclose the confidential information only to appropriate public authorities, the potential victim, professional workers, and/or the family of the client."

here. All three components need to be deemed present in order to justify the breach of confidentiality.

First, the phrase “clear and substantial risk” implies a strong probability that an event will occur, not simply a remote possibility that it could occur. Although psychologists cannot predict the future any better than the average person who is making an informed guess, there is an expectation that future harm can be predicted and thereby avoided. In the case of Steven, it seems clear that David has been imprisoned for a crime, and it seems likely that David did not commit the crime. It seems worth examining more closely to see if David is truly innocent of the crime. Without becoming a junior criminal investigator, the psychologist may want to explore the “evidence” in more detail.

Second, “imminent” implies the immediate future, usually considered the next 72 hours. Therefore, “imminent harm” does not include past events that have already occurred and therefore cannot be changed. One study found that approximately 11% of clinicians mistakenly believed that they needed to report a client’s past criminal actions.<sup>7</sup> In reality, the duty to breach confidentiality does not extend to past behaviors. In the case of Steven, the murder has already occurred, and therefore cannot be prevented. However, David is being imprisoned. If innocent of the crime, David is being harmed by the faulty imprisonment.

Third, “serious harm” captures both the type and degree of harm that is expected to occur. “Serious harm” is usually construed as acts of violence, aggression, or physical assault. The notion of “harm” may extend beyond physical violence. However, the notion of “harm” probably does not include outbursts that are limited to harmful words, such as statements expressed in anger, verbal threats, or slanderous statements. In the case of Steven, the harm has occurred to the murder victim, and is ongoing for David, who was wrongfully convicted of the crime. It remains unclear if “serious harm” could extend to an innocent man who has been falsely accused and wrongfully imprisoned for a violent crime.

### III. APPROACH EACH SITUATION IN A LOGICAL MANNER

In the present case, the therapist would not want to make any immediate decision about how to process Steven’s confession. A calm and thoughtful approach may help the therapist to take time to review several options and gather additional information. During therapy sessions, it can be useful for the therapist and client to review the key events that occurred and gather additional information. As they review the events and gather additional information, the therapist can remain focused on supporting the client through a difficult situation. In addition, the therapist can help the client to begin viewing the situation from a different perspective (e.g., “What would a defense attorney say about your guilt or

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<sup>7</sup> Marcus J. Goldman & Thomas G. Gutheil, *The Misperceived Duty to Report Patients’ Past Crimes*, 22 BULL. AM. ACAD. OF PSYCHIATRY L., 407, 408 (1994).

innocence?” “If a police officer had witnessed the entire event, would you have been arrested immediately?”).

The therapist may try to verify the accuracy of a client's statements in an attempt to evaluate whether the client is feeling guilty about an event that might have occurred even without the client's influence. Thus, some clients tend to blame themselves or accept responsibility for negative events even when not fully warranted. Alternatively, it can be helpful to assure that the client is not being pressured by any type of social influence to distort the events in order to rescue someone else. In the case of Steven, there could be a risk of deception. Steven admits to being a member of a street gang. There is a possibility that leaders of the gang wanted to gain the prison release of David, and the gang leaders could have pressured Steven to supply a false confession.

It is useful to gather additional information about the people and the recent events. However, it is important to recognize that psychotherapists are not police detectives or criminal investigators. It is not the responsibility of the therapist to collect and examine evidence. A therapist does not serve as criminal investigator, legal prosecutor, or judge. It is the responsibility of the therapist to help clients move forward in a positive manner.

The therapist may attempt to find strategies that could be helpful to the client while also being good for society in general. First, the primary goal of therapy should be centered around issues that are helpful for the client. Each client should be able to trust the fiduciary nature of their relationship with their therapist. It can be useful to remind the client that all aspects of the therapist's work are aimed for the best interests of the client. Second, therapy should retain a broad view and strive for improvements that are good for society in general. Without a focus on the common good, therapy could encourage changes that make clients more self-centered, narcissistic, selfish, and greedy. Alfred Adler stressed the notion of social interest, in which all people should strive to make improvements that help future generations, regardless of their biological kinship to the client.<sup>8</sup> If therapeutic changes are helpful to the client and only the client, the treatment is likely to be misguided.

The disclosure of confidential material from therapy sessions should be viewed as a last resort.<sup>9</sup> In many difficult situations, it seems best to encourage clients to report themselves to the proper authorities.<sup>10</sup> By encouraging clients to accept responsibility for their own actions, it can remove the therapist from the role of “whistle blower.” In addition, a willingness to turn oneself into authorities may

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<sup>8</sup> James C. Overholser, *Psychotherapy that Strives to Encourage Social Interest: A Simulated Interview with Alfred Adler*, 20 J. PSYCHOTHERAPY INTEGRATION, 347, 347 (2010). James C. Overholser, *A True Sense of Community Has No Boundaries: A Simulated Interview with Alfred Adler*, 69 J. INDIVIDUAL PSYCHOL. (forthcoming 2013).

<sup>9</sup> Michael B. Donner, *Balancing Confidentiality: Protecting Privacy and Protecting the Public*, 39 PROF. PSYCHOL.: RES. AND PRAC. 369, 369 (2008).

<sup>10</sup> Thomas G. Gutheil, *Moral Justification for Tarasoff-Type Warnings and Breach of Confidentiality: A Clinician's Perspective*, 19 BEHAV. SCI. & L. 345, 351 (2001).

promote a more favorable impression when punishments are decided. However, many clients may be reluctant to admit their guilt and accept the punishment. It is likely to become a major challenge to convince the client to take this vital step. An effective therapist will need to rely on empathy to understand the client's dilemma. Most people would refuse to accept the consequences if the punishment could result in incarceration. A prison sentence would be frightening to anyone, and in the case of Steven, it could be avoided by remaining silent. However, the client might begin to shift his intentions if he can be helped to envision a plausible and undesirable alternative (e.g., a lifetime of secrecy and pervasive feelings of guilt).

Psychotherapy sessions are often aimed toward helping clients to make the best decisions possible, given their circumstances. For many clients, it can be important for a therapist to encourage autonomy and responsibility in the client, and thereby expect the client to make the best decision.<sup>11</sup> Effective therapy can focus on improving a client's self-awareness, self-determination, self-improvement, and ability to make good decisions. Ultimately, psychotherapy should strive to make the work of the therapist obsolete. Clients should learn new strategies for managing the problems they encounter and making effective decisions in their lives. Therapy relies on a dialogue. The therapist is more likely to provide questions rather than answers. In the case of Steven, it seems important for the therapist to avoid scolding him or giving him direct instructions for proper behavior. Instead, the therapist may encourage Steven with words of hope and inspiration (e.g., "I know this is a difficult situation, but I am sure that you will make the right decision," "I understand what a mess this has become, but I believe you are strong enough to handle whatever lies ahead.>"). In this way, the therapist serves to push the client forward while nonetheless allowing the client to steer the direction.

A Socratic dialogue can be used to explore and discuss important issues that appear central to the client's life, problems, and potential solutions.<sup>12</sup> A Socratic dialogue relies on numerous questions to provoke the client and encourage new ideas.<sup>13</sup> Furthermore, a Socratic dialogue is based on inductive reasoning whereby therapist and client work together to search for novel solutions to long-standing problems.<sup>14</sup> Effective therapy often relies on a collaborative alliance that unites the

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<sup>11</sup> Gina B. Lasky & Maria T. Riva, *Confidentiality and Privileged Communication in Group Psychotherapy*, 56 INT'L J. GROUP PSYCHOTHERAPY 455, 456-57 (2006).

<sup>12</sup> James C. Overholser, *Elements of the Socratic Method: I. Systematic Questioning*, 30 PSYCHOTHERAPY 67, 72 (1993).

<sup>13</sup> Garth Seiple, *The Socratic Method of Inquiry*, DIALOGUE, Oct. 1985, at 18; Al Milliren, Mary Milliren & Daniel Eckstein, *Combining Socratic Questions with the "ADAPT" Problem-Solving Model: Implications for Couple's Conflict Resolution*, 15 FAM. J., 415, 416 (2007).

<sup>14</sup> James C. Overholser, *Elements of the Socratic Method: II. Inductive Reasoning*, 30 PSYCHOTHERAPY 75, 83 (1993).

therapist and client in a search for solutions.<sup>15</sup> The therapist could try three similar strategies to shift a client's perspective and expand his options. First, the therapist may try to help the client review his personal life history in order to see how he has been able to deal with similar problems in the past. Second, the therapist may help the client search for potential solutions by asking if he has previously ever seen any of his friends or family members who have managed similar problems. Third, the therapist may ask the client to identify any role models that may have been able to manage similar problems. The role models may involve real people (e.g., sports heroes, movie stars, politicians) or fictional characters (e.g., James Bond, Bruce Wayne). In any of these options, the goal is to support the client and expand the range of coping options that are available and can be envisioned by the client. These three strategies are often useful, but may not apply very well to Steven's situation.

An important aspect of psychotherapy, according to the Socratic method, involves a willingness to focus the dialogue on issues related to virtue ethics.<sup>16</sup> When confronting aspects of virtue, the dialogue can focus on wisdom, courage, justice, moderation, or piety.<sup>17</sup> In the case of Steven, the discussion may be directly relevant to justice and courage. More specifically, justice refers to making decisions that are fair to all parties. During therapy sessions, clients can be encouraged to do what is right, even if it might be painful, or detrimental to the client. An interesting quotation has been attributed to Socrates: "to do injustice and not be punished is greatest of all and by nature first among evils."<sup>18</sup> Socrates believed that punishment was the best treatment for past misdeeds.<sup>19</sup> Without punishment, the offender may gain from improper behavior, and then would become more likely to behave in a similar manner again. The unjust person who gets away without being punished will allow the wickedness to corrupt his moral character.<sup>20</sup>

Courage can be important for many clients. As related to virtue ethics, courage involves knowing what to do and being willing to do what is right, even if it may result in problems for oneself.<sup>21</sup> For Steven, courage is likely to mean

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<sup>15</sup> James C. Overholser, Commentary, *Collaborative Empiricism, Guided Discovery, and the Socratic Method: Core Processes for Effective Cognitive Therapy*, 18 CLINICAL PSYCHOL.: SCI. & PRAC. 62, 63 (2011).

<sup>16</sup> TERENCE IRWIN, PLATO'S ETHICS 199 (1995).

<sup>17</sup> James C. Overholser, *Elements of the Socratic Method: VI. Promoting Virtue in Everyday Life*, 36 PSYCHOTHERAPY 137, 137 (1999).

<sup>18</sup> This quotation has been attributed to Socrates during a conversation with Polus as part of the Platonic dialogue entitled "The Gorgias." PLATO, THE GORGIAS 479d, 276 (R.E. Allen trans., Yale University Press 1984) (380 B.C.E.).

<sup>19</sup> Robert E. Cushman, *The Socratic-Platonic Conception of Philosophy as Therapy*, 43 THE DUKE DIVINITY SCH. REV. 152, 159 (1978).

<sup>20</sup> MARY M. MACKENZIE, PLATO ON PUNISHMENT 179 (2006).

<sup>21</sup> James C. Overholser, *Courage and the Socratic Method of Psychotherapy*, 35 VOICES: J. AMER. ACAD. PSYCHOTHERAPISTS 6 (1999).

confessing to the crime and accepting the punishment that will surely follow. However, therapy sessions may become slow and complex as the dialogue may help Steven to identify reasons for admitting his guilt to the public officials. It is likely to take a fair amount of time before Steven is willing to accept the consequences of his actions. For difficult issues, it can be useful to continue the discussion across several sessions. The therapist may need to plant a seed and give it some time to grow. Sometimes, clients can be asked to write about important topics, using the time between sessions to confront their thoughts and feelings about topics such as guilt, responsibility, punishment, and fairness.

It can be useful to view a therapist's questions as analogous to a spotlight that can be aimed to highlight certain issues while deliberately leaving other topics in the background. In every session, the therapist makes numerous decisions about the topics to be discussed, while ignoring many other issues. Effective therapy cannot move forward onto a discussion of recent events, negative emotions, or trivial problems without confronting the major issues that lie at the core of the client's struggles. Virtue ethics can help the therapeutic dialogue to remain focused on justice and proper behavior. It would be meaningless for therapy to help ease a client's guilt without expecting him to make any changes that could atone for the past behavior. Thus, it makes sense for the therapist to persistently raise the issue of crime, responsibility, and punishment, potentially even aiming to enhance the client's feelings of responsibility and guilt. Edgar Allen Poe's short story, "The Tell-Tale Heart," might provide a useful parable to enliven the discussion. Therapy cannot move forward onto other topics until the central area has been confronted and addressed in a mature and responsible manner.

#### IV. CONCLUSIONS

For many clients, the optimal goal of psychotherapy is not a simple amelioration of the client's emotional distress. Instead, psychotherapy should aim for more lasting changes in the client's ability to cope with difficult situations, approach problems in a rational manner, and make decisions even when confronted with a difficult dilemma. Over time, the client's self-awareness and self-regulation may be displayed in a variety of situations. Unfortunately, too much session time is often misdirected onto trivial matters, recent events, and minor struggles. It is important for the therapist to redirect the dialogue onto important matters and help the client to move beyond common trivialities. Effective therapy often helps clients to begin to focus on major life goals and important changes they can make in their daily routines.

Virtue is an appropriate topic for some clients and some sessions. A therapist should always have a plan for helping clients and a vision for moving toward important and lasting goals. It can be too easy for therapy sessions to become a simple review of recent events, or become focused on helping a client to feel less depressed or less anxious. Instead, therapy is more powerful when the goal includes self-awareness, self-improvement, and making changes that are helpful to

the client as well as other people in the client's life. Therapy can focus on cultivating virtue in the everyday activities of a client.